

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

**JERI FARRELL**

Claimant

VS.

**UNIFIED SCHOOL DISTRICT #229**

Respondent

AND

**KANSAS ASSOCIATION OF SCHOOL BOARDS**

Insurance Carrier

AND

**KANSAS WORKERS COMPENSATION FUND**

Docket No. 196,840

**ORDER**

Respondent appeals from a Preliminary Hearing Order by Administrative Law Judge Alvin E. Witwer dated September 15, 1995, wherein the Administrative Law Judge dismissed the Kansas Workers Compensation Fund from this workers compensation claim and awarded attorney fees to the Workers Compensation Fund for a post July 1994 date of accident.

**ISSUES**

- (1) Whether the Administrative Law Judge exceeded his authority in dismissing the Kansas Workers Compensation Fund from this claim and awarding attorney fees to the Workers Compensation Fund.
- (2) What, if any, is the liability of the Kansas Workers Compensation Fund for injuries occurring after July 1, 1994?

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Based upon the evidence presented and for purpose of preliminary hearing, the Appeals Board finds as follows:

The Appeals Board finds this matter is properly before the Appeals Board pursuant to K.S.A. 44-551 upon appeal of a final order dismissing the Kansas Workers Compensation Fund from the workers compensation claim.

The liability of the Kansas Workers Compensation Fund for injuries occurring after July 1, 1994, is a question which has only recently been decided by the Appeals Board in the case of James Jones, Jr. v. The Boeing Company-Wichita, Kemper Insurance Company and the Kansas Workers Compensation Fund, Docket Number 196,447. In Jones, the Appeals Board held that the Kansas Legislature intended, in its 1993 revisions of K.S.A. 44-566 and K.S.A. 44-567 as contained in S.B. 307, to eliminate all Fund liability in situations involving injuries to handicapped employees occurring on or after July 1, 1994. The Appeals Board held that any other interpretation or construction of K.S.A. 44-566a(e)(1) and K.S.A. 44-567(a)(1),(2) would have an unreasonable result.

As such, the Appeals Board finds that the Administrative Law Judge acted appropriately in dismissing the Kansas Workers Compensation Fund from this workers compensation claim.

The Administrative Law Judge went on to assess attorney fees against the respondent to cover the cost of the Workers Compensation Fund's defense. The Appeals Board finds that, as this was an issue of first impression, the dispute raised by the respondent was appropriate. As such, the award of attorney fees against the respondent is reversed and the Kansas Workers Compensation Fund is held liable for its own attorney fees in this instance.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Preliminary Hearing Order of Administrative Law Judge Alvin E. Witwer, dated September 15, 1995, is affirmed in part and the Kansas Workers Compensation Fund should be and is dismissed from this workers compensation claim. The Order of Judge Witwer is reversed in part in that the Kansas Workers Compensation Fund should be, and is, responsible for its own attorney's fees in this instance.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of January 1996.

BOARD MEMBER \_\_\_\_\_

BOARD MEMBER \_\_\_\_\_

BOARD MEMBER \_\_\_\_\_

c: Kip Kubin, Olathe, Kansas  
Frederick J. Greenbaum, Kansas City, Kansas  
Gary L. Jordan, Ottawa, Kansas  
Alvin E. Witwer, Administrative Law Judge  
Philip S. Harness, Director